

ENTERED

December 17, 2021

Nathan Ochsner, Clerk

**UNITED STATES BANKRUPTCY COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE: § **Chapter 11**

KORNBLUTH TEXAS, LLC, § **Case No. 21-32261 (CML)**

Debtor §

INTERIM

**XXXXXX AGREED ORDER AND STIPULATION AUTHORIZING
THE CONTINUED USE OF CASH COLLATERAL**

Kornbluth Texas, LLC, the above captioned debtor and debtor in possession (the Debtor)
and WPCM 2016 LLC, West Bay Area Boulevard, LLC (Lender) and together with the Debtor,
the Parties, acting by and through their undersigned counsel, stipulate and agree (the Stipulated
Order) as follows:

RECITALS

A. WHEREAS, on July 5, 2021 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).¹ The Debtor continues to manage its property and its business as a debtor in possession pursuant to §§ 1107 and 1108. The Debtor’s primary asset is its interest in the real property commonly known as Holiday Inn Webster and located at 302 West Bay Area Boulevard, Webster, Texas 77598 (the “Property”).

B. WHEREAS, Lender asserts that it is the holder of security interests, liens, and mortgages in all or substantially all of the Debtor’s property, including, but not limited to: (i) the Property and improvements thereon; (ii) all of the Debtor’s rights, title, and interests in all leases,

¹ Unless otherwise indicated, all section (§) references are to the Bankruptcy Code.

revenue, and rents collected therefrom; and (iii) all of the Debtor's rights, title, and interests in all buildings, structures, fixtures, inventory and personal property located thereon (collectively, the "Collateral"), as evidenced by the loan documents (collectively, the "Loan Documents"). Lender asserts that all of the Debtor's proceeds from the Collateral are cash collateral of the Lender (the "Cash Collateral") within the meaning of § 363(a).

C. WHEREAS, the U.S. Small Business Administration asserts it has a validly perfected lien encumbering all of the debtor's tangible and intangible personal property, including but not limited to accounts, deposit accounts, and receivables.

D. WHEREAS, on September 30, 2021, the Court appointed Douglas Brickley of The Claro Group, LLC as the Chief Restructuring Officer of the Debtor ("CRO") pursuant to Bankruptcy Code section 327(a) to operate and manage the Debtor's business operations.

E. WHEREAS, on October 13, 2021, the Court entered its *Agreed Order and Stipulation Authorizing Debtor to Use Cash Collateral on a Final Basis* [Docket No. 110] (the "Final Cash Collateral Order").

F. WHEREAS, appended to the Final Cash Collateral Order as Exhibit A was an operating budget for October 2021 and the Parties subsequently agreed to an operating budget for November 2021.

G. WHEREAS, ~~for December 2021 and January 2022 the Debtor and Lender agree~~
~~xxxxxxxxxxxxxxxxxxxxxx~~ that it is in the best interest of the Parties and the Debtor's bankruptcy estate for the Cash Collateral to be used in accordance with the budget attached hereto as Exhibit "A" (as the same may be amended or modified with the express prior written consent of Lender, the "Revised Operating Budget").

H. WHEREAS, except as otherwise stated herein, the Debtor, Lender, and the United States reserve all of their respective rights against the other with respect thereto.

STIPULATION AND ORDER

NOW, THEREFORE, IT IS HEREBY ~~STIPULATED AND AGREED BY THE DEBTOR AND THE LENDER THROUGH THEIR UNDERSIGNED COUNSEL, AND UPON COURT APPROVAL HEREOF, IT SHALL BE~~ ORDERED THAT:

1. Except as set forth below, (i) that certain Stipulation [Docket No. 117] between the Debtor, Lender, and Holiday Hospitality Franchising, LLC; and (ii) the Final Cash Collateral Order are incorporated by reference herein.²
2. The Debtor is hereby authorized, pursuant to sections 361 and 363 of the Bankruptcy Code, to use Authorized Cash Collateral (as defined in the Final Cash Collateral Order) in accordance with the Revised Operating Budget.
3. Section 2(f) of the Final Cash Collateral Order is stricken; *provided, however,* that the Debtor shall pay the Lender the amount of \$20,000 as an Adequate Protection Payment within three (3) business days of entry of this ~~Stipulated~~ Order.
4. Section 4 of the Final Cash Collateral Order is revised to read as follows:

Notwithstanding anything to the contrary contained herein, the Debtor's right to use the Cash Collateral shall expire, on the earliest to occur (the first such occurrence being hereinafter referred to as the "Termination Event") of: (i) the date Lender's claim (as agreed to between the Parties or adjudicated by the Court) is paid in full (the "Payoff Date"); (ii) January 15, 2022; (iii) the entry of an order by this Court terminating the use of Cash Collateral; (iv) the conversion of the Debtor's bankruptcy case to a case under chapter 7 of the Bankruptcy Code; (v) the appointment of a trustee or examiner; (vi) the occurrence of the effective date or consummation of a plan of reorganization; or (vii) the Debtor's non-compliance with any term or provision of this ~~Stipulated~~ Order and the expiration of five (5) days' notice of such alleged default and opportunity to cure.

² Capitalized terms not defined herein shall have the meanings given to them in the Final Cash Collateral Order.

5. Section 3 of the Final Cash Collateral Order is revised to read as follows, but only with respect to the Debtor's use of Cash Collateral for the months of December 2021 and January 2022.

Carve-Out. Subject to the terms and conditions contained in this paragraph, the Adequate Protection Obligations shall be subject and subordinate to payment of a carve-out (the “Carve-Out”). As used in this ~~SuppXXXX~~ Order, the term “Carve-Out” shall mean: (a) quarterly fees required to be paid pursuant to 28 U.S.C. § 1930(a)(6); and any fees payable to the Clerk of the Bankruptcy Court (the “Statutory Fees”); (b) actually incurred expenses included in the Revised Operating Budget but unpaid as of the Termination Date (defined herein) of the Debtors' right to use Authorized Cash Collateral under this ~~SuppXXXX~~ Order; and (c) the aggregate amount of any fees and expenses of any Court-approved estate professionals (the “Professionals”) which are actually incurred, but unpaid as of the Termination Date, but only to the extent such fees and expenses have been previously or subsequently approved by this Court and only to the extent such incurred and unpaid fees and expenses exceed any retainer held by any such Professional at the time of such termination. In addition, the Carve-Out shall include the reasonable fees and expenses incurred by a trustee under section 726(b) of the Bankruptcy Code in an amount not to exceed \$10,000. Prior to the Termination Date, and subject to the entry of an appropriate order of this Court (in form and substance reasonably acceptable to the Lender), the Debtor shall be authorized to use Authorized Cash Collateral to pay compensation and reimbursement of budgeted expenses allowed and payable through and including the Termination Date in accordance with the Revised Operating Budget. To the extent the Debtor has insufficient funds to pay compensation and reimbursement of expenses through and including the Termination Event in accordance with the Revised Operating Budget, Lender agrees: (i) to pay the shortfall from the disposition of Lender's Collateral; and (ii) the Carve-Out set forth in this ~~SuppXXXX~~ Order shall survive and remain in full force and effect regardless of whether Lender forecloses and/or sells the Collateral as provided in the Court's prior Order [ECF # 85] lifting the automatic stay. Nothing herein shall be construed to impair the ability of any party in interest to object any fees, expenses, reimbursement, or compensation sought by the Professionals, nor shall anything herein be construed to affect the rights of any party in interest to file an application for the allowance of fees and expenses.

6. In addition to the provisions of the Final Cash Collateral Order which are incorporated in this ~~SuppXXXX~~ Order, ~~the Parties agree that~~ the Carve-Out shall not exceed an amount equal to the sum of amounts previously agreed to pursuant to the Court's Final Cash Collateral Order plus the difference between (i) the allowed amount of the Lender's claim against the Debtor's Bankruptcy Estate and (ii) any amounts paid to the Lender on account of such claim,

including the amount of any credit bid by the Lender at a foreclosure sale. Further, nothing in this ~~Stipulated~~ Order or in any prior order of the Court shall be deemed a waiver by the Debtor or its estate of its rights against any creditor, other than the Lender, pursuant to section 506(c) of the Bankruptcy Code.

7. The Court shall retain jurisdiction with respect to all matters arising from or related to this ~~Stipulated~~ Order.

8. **The Court will conduct a hearing on the continued use of cash collateral under this Order on December 30, 2021 at 10:00 a.m.**

Signed: December 17, 2021


Christopher Lopez
United States Bankruptcy Judge

AGREED AND CONSENTED TO:

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**COUNSEL FOR WFCM 2016-LC25 WEST
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EXHIBIT A

REVISED OPERATING BUDGET

Kornbluth Texas, LLP

Case 21-32261

Seven Week Cash Flow

	Week Ending 12/17/2021	Week Ending 12/24/2021	Week Ending 12/31/2021	Week Ending 1/7/2022	Week Ending 1/14/2022	Week Ending 1/21/2022	Week Ending 1/28/2022	Totals
Room Nights Available	763	763	763	763	763	763	763	
Room Nights	331	331	331	344	344	344	344	2369
Occupancy Percentage	43.4%	43.4%	43.4%	45.1%	45.1%	45.1%	45.1%	44.4%
ADR	\$90.89	\$90.89	\$90.89	\$92.71	\$92.71	\$92.71	\$92.71	\$ 91.95
 Cash Receipts¹	 30,085	 30,085	 30,085	 31,892	 31,892	 31,892	 31,892	 217,823
 Cash Disbursements								
+ Employee Payroll	24,500	-	24,500	-	24,500	-	24,500	98,000
Food and Beverage Expense	250	250	250	250	300	300	300	1,900
State and Local Tax (do not use)	-	-	-	-	-	-	-	-
Property Tax ² (do not use)	-	-	-	-	-	-	-	-
+ Gas and Electricity	-	-	-	-	3,724	-	-	3,724
+ Water/Sewer	-	840	-	-	-	-	840	1,680
+ Maintenance Supplies	250	250	250	250	250	250	250	1,750
+ Operational Franchise Fee	17,500					19,725		37,225
Equipment Repairs & Supplies	500	500	500	500	500	500	500	3,500
+ Laundry and Housekeeping Supplies	662	662	662	688	688	688	688	4,738
Office Supplies				150				150
Lobby Materials (do not use)	-	-	-	-	-	-	-	-
Internet & Cable	-	-	5,000	-	-	-	5,000	10,000
Travel Agent Commissions (2.5% Transient)	752	752	752	797	797	797	797	5,446
401K	1,400	-	1,400	-	2,500	-	2,500	7,800
Miscellaneous Expense ³	1,053	1,053	1,053	1,116	1,116	1,116	1,116	7,624
Total Cash Disbursements	29,367	21,807	34,367	3,752	34,376	23,377	36,492	183,536
 Cash Flow from Operations	 718	 8,278	 (4,282)	 28,141	 (2,483)	 8,516	 (4,599)	 34,286
								15.7%
 Non-Operating Expenses								
Capital Expenditures & One Time Expense ⁴	6,898	-	-	-	-	-	-	6,898
Insurance	-	12,465	-	-	-	-	12,465	24,930
Property Tax ²	-	-	-	-	-	-	-	63,141
State and Local Tax	-	-	17,388	-	-	-	16,008	33,700
Past Due Franchise Fees ⁵	-	-	-	-	-	-	-	-
Total Non-Operating Expenses	6,898	12,465	17,388	-	-	-	28,473	65,224
 Adequate Protection Payments								-
Adequate Protection Payments	20,000	-	-	-	-	-	-	20,000
 Bankruptcy Related Costs								-
Okin Adams ⁶	-	-	-	-	-	-	-	-
The Claro Group ⁶	-	-	-	-	-	-	-	-
BITX Associates	-	-	-	7,500	-	-	-	7,500
US Trustee ⁶	-	-	1,605	-	-	-	391	1,996
Total Bankruptcy Related Costs	-	-	1,605	7,500	-	-	391	9,496
 Net Cash Flow	 (26,181)	 (4,187)	 (23,275)	 20,641	 (2,483)	 8,516	 (33,464)	 (60,434)
 Cash Collateral Balance								
Beginning Cash Balance	259,921	233,740	229,553	206,278	226,919	224,435	232,951	259,921
Gain/(Loss) from Activity	(26,181)	(4,187)	(23,275)	20,641	(2,483)	8,516	(33,464)	(60,434)
Ending Cash Balance	233,740	229,553	206,278	226,919	224,435	232,951	199,487	199,487

Post Close Expenses⁷**Notes**

1. Revenues are estimated based on STR and PY performance.

2. Property taxes are included in post close expenses

3. Miscellaneous Expense is estimated to be 3.5% of weekly revenues

4. See tab "Capital & One Time Expense" for a breakout of Capital Expenses for the week ending 12/10

5. The current amount outstanding for over due Franchise Fees is \$73,459.20. We are currently in the process of determining the break out of pre and post-petition as well as working out a payment plan.

6. See tab "Accrued & Unpaid Expenses" for breakout of estimated professional fees accrued in Oct and Nov

7. See tab "Accrued & Unpaid Expenses" for breakout

Accrued & Unpaid Expenses

**There are no unpaid expenses outside of those listed below that we are currently aware of*

Professional Fees**Okin Adams**

	Estimated Actuals	
	October	November
Estimated Actuals	\$ 50,000	\$ 50,000
Payments	-	-
Outstanding Balance	\$ 50,000	\$ 100,000

The Claro Group

	Estimated Actuals	
	October	November
Estimated Actuals	\$ 50,000	\$ 50,000
Payments	-	-
Outstanding Balance	\$ 50,000	\$ 100,000

**Professional fees for December and January not included in budget*

Other Expenses**Due at Close**

Property Taxes	\$ 63,141
CBRE	\$ 50,000
Total	\$ 113,141

Unpaid Franchise Fees

Currently in the process of determining the outstanding balance

US Trustee Fees

Calculation: .4% x (Quarterly Disbursements-62,624)+250

Q4

October Disbursements	\$ 216,468
November Disbursements	92,117
December Disbursements (Estimated)	92,732
US Trustee Fees	\$ 1,605

Q1

January Disbursements	97,995
US Trustee Fees	\$ 391

Capital & One Time Expenses**Capital & One Time Expenses**

Vendor	Description	Amount
Yvonne Small	Expense Reimbursement for essential items	\$1,800.00
Kat's Plumbing	Boiler repair	\$2,482.16
Willbanks	Boiler repair	\$2,616.32

\$6,898.48